

Chapter 23

Consultation and Coordination

During the preparation of this Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR), the lead agencies, Bureau of Reclamation (Reclamation), and the Department of Water Resources (DWR), consulted with resource specialists, agencies with specific expertise in project issues, and members of the public. These consultations assisted the lead agencies in determining the scope of the DEIS/EIR, identifying the range of alternatives and environmental protection and mitigation measures, and defining impact significance. Consultation included informal agency communications, formal interagency meetings, and public meetings. The lead agencies will continue to solicit public and agency input on the project by encouraging review of this DEIS/EIR. This chapter summarizes agency consultations and public involvement efforts conducted during the project planning and environmental review process.

23.1 Fish And Wildlife Consultation

The U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NOAA Fisheries), and California Department of Fish and Game (CDFG) are CALFED agencies and are acting as cooperating agencies on the Environmental Water Account (EWA) DEIS/EIR. USFWS, NOAA Fisheries, and CDFG consultation is being undertaken consistent with the CALFED Plan as described in the following.

The CALFED Bay-Delta Program is a collaborative effort of 23 federal and state agencies that seek to resolve water supply conflicts in the Bay-Delta. The CALFED Programmatic Record of Decision (ROD) set forth a collaborative means for addressing the environmental effects (adverse and beneficial) of CALFED actions related to improving water supply reliability and recovery/restoration of the Delta environment and species dependent on the Delta. Through the implementation of the Multi-species Conservation Strategy (MSCS) process, the CALFED agencies assessed the effects of potential CALFED actions on targeted species, and then developed initial conservation measures that when implemented would meet the overall CALFED objectives.

One of the goals of the CALFED MSCS is to address combined compliance with the federal endangered species act (FESA), California endangered species act (CESA), and the California Natural Community Conservation Planning Act (NCCPA) requirements. The MSCS serves as the biological assessment of the programmatic CALFED actions. USFWS and NOAA Fisheries used the MSCS as the biological assessment to develop the programmatic biological opinions for the programmatic CALFED actions. CDFG used the MSCS for compliance with the CESA and NCCPA.

For second-tier CALFED project actions such as the EWA, an Action Specific Action Plan (ASIP) is required to address the FESA, CESA, and NCCPA consultation requirements of federal and state agencies. As a tiered document, the ASIP focuses on

issues specific to the EWA Proposed Actions. This ASIP therefore addresses the biological assessment requirements. The USFWS and NOAA Fisheries will use this ASIP to develop action-specific biological opinions relative to the EWA. The CDFG will use this ASIP to address compliance with the CESA and NCCPA.

23.1.1 Consultation To Date

As described above, Fish and wildlife consultation was conducted in coordination with the development of the ASIP. Issues pertaining to the ASIP have been discussed within an ASIP Team comprised of representatives from Reclamation, DWR, USFWS, CDFG, and NOAA Fisheries. The ASIP reports USFWS, NOAA Fisheries, and CDFG findings regarding impacts to identified endangered, threatened, and proposed or candidate species that may occur in the action area.

April 17, 2002---ASIP team discussed the Detailed Work Plan for Task 7 (Fish and Wildlife Consultation), the overall ASIP process and schedule, and the ASIP's relationship to the EWA.

May 1, 2002---ASIP team discussed crop idling and methodology for producing the species list.

May 6, 2002---Reclamation and DWR representatives discussed with CDFG impacts on water districts and clarify methodology for developing the species list.

May 22, 2002---CDFG and CALFED discussed an outline for the ASIP, impacts, water districts including Kern Water District, and general progress.

June 5, 2002---ASIP team discussed appropriate maps used to determine species distribution within the EWA action area.

July 23, 2002---Reclamation, CDFG, USFWS, Attorney General's Office, and CALFED discussed ASIP preparation. Discussion centers on methodologies for assessing impacts and geographical division on the project area.

September 11, 2002---ASIP team discussed the proposed document review process for September and October and the revised Table of Contents.

September 20, 2002---The ASIP team discussed the ASIP review process, a revised Table of Contents, the ESA definition of baseline, the species and Natural Community Conservation Plan (NCCP) Communities lists, the Crop Idling Impact Assessment Approach, and the ASIP settings. Also discussed at this meeting was whether the ASIP will be part of the EIS/EIR or act as a stand alone document and whether this is a Reclamation ESA consultation or whether all five agencies share joint responsibility for the consultation.

September 26, 2002---The ASIP team discussed the ASIP review process, Hydrologic Modeling for potential impact determination, thresholds of significance, the impact assessment approach for reservoir covered species, and indirect, interrelated, and

interdependent effects. The hydrologic modeling text was provided in advance for review during the meeting.

October 4, 2002---The ASIP team discussed structure, format, and content of the draft ASIP. Specifically the team discusses the hydrologic modeling section, Table of Contents, ESA Baseline, Impact Analysis, and Project Description.

October 10, 2002---Representatives from USFWS, CDFG, Reclamation and CALFED meet to discussed ESA baseline definitions and effects analysis approach, conservation measures, and content of draft ASIP.

23.2 Indian Trust Assets And Native American Consultation

EWA agencies are responsible for evaluating Indian Trust Assets (ITA) impacts. Section 20.3.3 contains avoidance criteria that reduce effects to a less than significant level. In the event an impact is identified, consultation with affected recognized tribal governments proceeds through the proponent agencies, the Bureau of Indian Affairs (BIA), the Office of the Solicitor, and the Office of American Indian Trust.

Tribal consultation would proceed any formal EWA groundwater transfer in the vicinity of potentially affected tribes. Government-to Government consultation shall take place to determine interests, concerns, impacts, applicable tribal regulations, and appropriate avoidance measures. Consultation may involve EWA agencies, BIA, and the Regional Solicitor's Office.

23.2.1 Consultation to Date

August 1, 2002---Representatives from Reclamation meet with BIA to introduce EWA and initiate discussion on possible hydrogeologic criteria that could identify potential impacts on ITAs. Potential impacts require Reclamation to notify and consult with trust land owner.

August 8, 2002---Reclamation and BIA met to continue discussion about establishing operating rules that would require Reclamation to initiate ITA consultation. Reclamation proposed a structure for the consultation process.

September 12, 2002 ---Representatives from Reclamation, CDM, and Public Affairs Management met to develop appropriate outreach involvement processes and material for the general public, farm labor, and Native Americans. Discussed issues related to Environmental Justice, tribal involvement, and Indian Trust Assets.

23.3 National Historic Preservation Act/State Historic Preservation Officer Consultation

The National Historic Preservation Act (NHPA) of 1966 (as amended in 1992) requires federal agencies to consult with the Advisory Council on Historic Preservation concerning potential effects of federal actions on historic properties. To comply with

the NHPA, notices of public meetings for this project have been sent to the State Historic Preservation Officer (SHPO), which acts as an intermediary for the Advisory Council on Historic Preservation. A copy of this DEIS/EIR has been sent to SHPO, as a unit of the California Department of Parks and Recreation, requesting its review and soliciting input on the project. Reclamation will continue to coordinate with the Advisory Council on Historic Preservation and SHPO, consistent with Section 106 of the National Historic Preservation Act.

23.3.1 Consultation To Date

Formal consultation with SHPO was initiated by a letter request from Reclamation dated February 5, 2003. In this letter, Reclamation recommended that due to the nature of the proposed EWA actions, a Programmatic Agreement would be the most appropriate vehicle for the treatment of historic properties. SHPO responded to Reclamation in a letter dated March 11, 2003. In this letter, SHPO stated its agreement that a Programmatic Agreement is the most appropriate approach for dealing with historic properties.

23.4 Environmental Justice

Executive Order 12898, Section 2-2, signed by President Clinton in 1994, requires all federal agencies to conduct programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons the benefits of, or subjecting persons to discrimination because of their race, color or national origin. Section 1-101 requires federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of programs on minority and low-income populations.

State law defines environmental justice in Government Code Section 65040.12(e) as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. Government Code Section 65040.12(a) designates the Governor's Office of Planning and Research (OPR) as the coordinating agency in state government for environmental justice programs, and requires OPR to develop guidelines for incorporating environmental justice into general plans.

The Bay-Delta Public Advisory Committee has an Environmental Justice Subcommittee composed of federal and state agency representatives, tribal members, community-based organizations, advocacy groups, and others interested in achieving environmental justice. As mandated by the ROD, CALFED agencies are committed to ensuring that all its programs and agencies are committed to seeking fair treatment of people of all races, cultures, and incomes, such that no segment of the population bears a disproportionately high and adverse health, environmental, social, or economic impact resulting from CALFED's programs, policies, or actions.

23.4.1 Consultation to Date

October 11, 2002 --- The EWA Actions were discussed at the CALFED Bay-Delta Public Advisory Committee Environmental Justice Subcommittee meeting. At this meeting, DWR requested input from conference members on development of a mechanism for a cost and reimbursement structure for compensating impacts on third party laborers potentially affected by water transfers.

23.5 Public Involvement

The following is a summary of the public involvement activities including public informational and environmental process scoping meetings for the project. Further discussion of these activities and the issues identified for evaluation in the EIS/EIR are presented in the July 2001 Public Scoping Summary Report, available through lead agency contacts. (See the Abstract for lead agency contacts.)

23.5.1 Environmental Impact Statement/Report Scoping

Reclamation published the Notice of Intent (NOI) to prepare an EIS and Notice of Public Scoping Meeting pursuant to the National Environmental Policy Act (NEPA) in the *Federal Register* on July 6, 2001. This notice was accompanied by a press release issued by CALFED announcing the public scoping meetings, which was mailed to approximately 500 interested individuals, stakeholders and organizations. In addition, DWR issued Notice of Preparation (NOP) of an EIR pursuant to the California Environmental Quality Act (CEQA) to resource agencies and interested members of the public on July 10, 2001. Copies of the NOI and NOP are included in Appendix F.

Public scoping meetings for EWA were held throughout the State of California to provide the public with an update on the status of the project and to identify additional significant issues to be addressed in the EIS/EIR. The public scoping meetings were held in Sacramento, CA, on July 19, 2001; Chico, CA, on July 19, 2001; Oakland, CA, on July 23, 2001; Tracy, CA, on July 24, 2001; Bakersfield, CA, on July 25, 2001; and Los Angeles, CA, on July 26, 2001. Attendees included agency staff members, local residents, representatives from various organizations, representatives from various federal, state, and local government agencies, and the media.

At each public scoping meeting, a project overview presentation and public comment session were provided. During the first portion of the meetings, representatives of the lead agencies, CDFG, and USFWS discussed the environmental documentation process and the elements of EWA. Agency representatives then presented a CALFED overview, including components of the CALFED program, description of tiered environmental documents, and an overview of EWA. A public comment session followed, at which time written comments were received and oral comments were recorded. A scoping report was prepared to summarize the public comments received at the scoping meetings.

23.5.2 Summary Of Public Concerns

The comments received at the public scoping meetings, as well as those received in response to the NOI and NOP, are summarized below by major topic. Consultations with resource agencies and the professional judgment of the specialists involved in preparation of the DEIS/EIR further defined the impact issues that are addressed in impact analyses in Chapters 4 through 20.

23.5.2.1 Resource Related Issues

23.5.2.1.1 Water Supply and Water Management

- Address the effects and limitation on Delta exports.
- EWA proposes increased exports, but decreased protection from those exports. The tidal barriers partially mitigate the export pumps' effects on water levels and quality. If barriers must be removed for increased exports, users will lose protection against exports in order that exporters may not be affected.
- The use of EWA to compensate for overages in the (b)(2) accounting procedures is risky and probably not feasible. EWA obligations may be extremely large, exceeding its ability to compensate for reduced deliveries. The EWA may not be able to acquire enough water through use of its variable assets to cover upstream fish protections formerly charged to (b)(2).
- EWA water from south of Delta purchases is of water previously exported in a manner that harms South Delta water levels, quantity and quality.
- DEIS/EIR must address how much less water is available downstream as well as when it is no longer available for each EWA purchase, and what the effects of such decreases are both individually and cumulatively.
- Model the effects of realistic increased EWA exports and identify when those opportunities for increased diversions may exist and what potential limitations may further affect the ability to accomplish such EWA exports.
- Mitigation for withholding water from human consumption for fish protection during or following successive drought years may be needed.
- The analysis must address how the program would function during multi-year droughts (e.g., 1928-1934).
- Where will the water come from without hurting non-state and federal water project users? What protections would be established.
- Will EWA effectively reduce food production in one area only to promote food production in another area?
- Do not send water south---south of the Delta is already over-committed.

- The statement that EWA water will be acquired in a manner that results in no adverse impacts on Central Valley Project (CVP) and State Water Project (SWP) contractors is incorrect in that the protection does not apply to CVP contractors other than export contractors.
- Analyze how purchases of stored water upstream of the Delta would affect Reclamation's ability to meet the Vernalis salinity standard, the amount of water available for CVP contractors from the subject reservoir, and the amount of water available for fisheries downstream of the subject reservoir.
- Since EWA does not rely on new water supplies, the purchases are only a reallocation of already insufficient supplies.
- EWA proposes to purchase water from suppliers who will substitute groundwater but have no less consumptive use. It also proposes to purchase water from diverters who will decrease their return flows to the waterways and/or capture more water than before. Each of these actions will have significant long-term effects on the water supplies and quality of waters in the Sacramento-San Joaquin system.
- Purchase of water from upstream of the Delta will necessarily adversely impact other water users because these purchases decrease the amount of water carried over in reservoirs. Reclamation is choosing to help its export contractors at the expense of its upstream contractors, what is the justification for taking water away from fish in one place to help fish in another?
- The barriers are mitigation for the export projects' adverse effects on South Delta water levels, quantity, quality, and circulation, and use of EWA will harm South Delta diverters. What is the basis for concluding that the existing regulatory actions are insufficient, and are the projects not currently mitigating their effects on fisheries? It is unclear whether the EWA, in combination with other protective mechanisms, will have enough "assets" to ensure the timely restoration and recovery of fish and wildlife.

23.5.2.1.2 *Water Quality*

- Address salinity levels.
- Address lack of ability to meet the Vernalis and three interior South Delta water quality objectives for agricultural beneficial uses.
- The EIS/EIR should address the interrelationship between EWA and (b)((2) releases, particularly as related to the releases from New Melones. Shift in releases of water affect the ability of New Melones to meet the Vernalis salinity standard.
- How will the timing and volume of asset movement affect water quality?

- Evaluate whether source shifting or other types of asset acquisition would have an impact on water quality.

23.5.2.1.3 *Groundwater Resources*

- Address groundwater supplies/overdraft in the San Joaquin Valley.
- Address overdraft of groundwater basins and supply for times of drought.
- The EIS/EIR should also analyze the cumulative effect on increasing the net long-term overdraft of groundwater. If water is shifted from food production to environmental use there will be an increase in groundwater overdraft in an attempt to maintain crop production where a shift from surface to groundwater is possible.

23.5.2.1.4 *Fisheries and Aquatic Resources*

- Identify species that have been impacted by EWA operations and the degree of significance to any impacts.
- Identify impacts of past operations on fisheries and what the likely adverse effects will be in the future.
- Include analysis regarding the effect of the EWA in reducing, stabilizing, or increasing Bay-Delta estuary fishery populations.
- Include all certain future water acquisitions, from either existing or new water sources, in the analysis.
- Identify methodology for determining which water users must pay for EWA benefits.
- Consider enhancement/restoration of flows in the Consumnes River for improved anadromous migration.
- How will the success or benefit of EWA, as a part of many actions taken to recover listed species, be measured? Include an analysis of EWA actions and expenditures to determine fishery benefits, not only to evaluate the program but also to help shape future actions.
- Explain how competing fish needs will be resolved [e.g., striped bass (predator target species), exotic species].
- Why worry about killing a few fish in the river when commercial harvest is so high, and new areas are soon to be opened up for additional commercial fishing?
- It has not been established that the water allocated to Tiers 2 and 3 of EWA will actually achieve fish recovery because CALFED scientists have not reviewed the scientific basis of the account. Not only has CALFED failed to show that the EWA will assist fish recovery, but also has failed to consider whether there are other non-flow practices that would be more beneficial to fish.

- Recognize and evaluate the interrelationship between the river and groundwater--- to determine true impacts to fish and wildlife.
- It is unclear whether the EWA will have enough assets to ensure the timely restoration and recovery of fish and wildlife.
- Since it is not possible to predict exactly when fish most need either additional flow or reduced exports to maximize their probability for survival, it makes sense to monitor fish distributions and movements and, at least to some degree, to manage Delta flows and exports in response to these factors.

23.5.2.1.5 *Agricultural Land and Water Use*

- Address impacts to agricultural resources.
- Use the California Agricultural Land Evaluation and Site Assessment (LESA) model to assess impacts to agricultural resources.
- Submit CALFED's Land Use Checklist with the environmental documentation whenever agricultural resources are affected by programs and projects.
- Mitigation measures must be considered and consistent with measures identified in the CALFED Record of Decision (CALFED ROD).
- The conversion of agricultural water resources has significant direct, indirect, and cumulative impacts that must be considered in the EIR/EIS.
- The EIR/EIS should evaluate the loss of export capacity for north-Delta transfers by agricultural water users, and identify how purchases will impact the CVP and SWP and whether the EWA will disproportionately impact the CVP.
- Government agencies should not protect the production of food by export water users at the expense of decreasing crop production elsewhere.
- The EIS/EIR must analyze the extent to which water is now used for production of food will be acquired for EWA.
- Evaluate how the EWA may affect our net food supply.

23.5.2.1.6 *Agricultural Economics*

- Address impacts to agricultural production and the economy.
- Increases of the salinity above the salinity threshold for each crop cause a proportional decrease in crop production and results in harm to the diverter.
- The Farm Bureau believes that the CALFED Programmatic Environmental Impact Statement/Environmental Impact Report is legally inadequate, as CALFED insufficiently considered the impacts associated with the reallocation of agricultural

resources. To the extent that the future environmental review of the EWA tiers from the legally insufficient EIS/EIR, the environmental review of the EWA will be fatally flawed.

23.5.2.1.7 *Power Production and Energy*

- Include explanation of how adverse impacts to CVP water and power production customer deliveries, and costs will be avoided.
- How will asset management be coordinated with energy production?
- An analysis of the power costs and re-directed impacts related to power use and production must be conducted, including changes in on- and off-peak pumping.
- How will the change in management of power companies due to divestiture affect the availability and need for assets? Need to recognize that historic management of co-generation is changing and may affect the program.
- Power impacts need to be evaluated to determine the feasibility of an action.

23.5.2.2 *Other Issues*

23.5.2.2.1 *Project Descriptions*

- The EIR/EIS should clearly explain how decisions on acquisition of EWA assets are made, who makes them, where the funds come from to pay for them, and who benefits from the transactions.
- Project location must be more closely specified.
- Include specific criteria used to “target” water acquisitions.
- The EIR/EIS must address the project location and total quantities of water to be acquired through the annual and final implementation of the program.
- Determine what regions of the state will be the potential targets of redirected impacts.
- Include details of the process for extending the program.
- Specify duration of the program.
- Address cumulative effects of 4+-year purchase program.
- Address costs of water available for purchase.
- Address the effects and limitation on exports from the Delta.
- The purpose is to ensure there is no increase in consumptive use of water resulting from the transfer.

- Section 3405 specifically prevents transfers that result in a net increase in consumptive use.

23.5.2.2.2 *Alternatives*

- Desalination should be evaluated as a source of water for EWA.
- Include historic transfers and Delta operations in the No-Action Alternative.
- Describe how failure to acquire assets will be dealt with.
- Consider alternatives that encourage agricultural management practices.
- Alternatives should only include purchases of water made available from a decrease in consumptive use or a decrease in water previously lost to consumptive use.
- Alternatives should address priorities for access to project facilities.
- Evaluate various mixes of assets and how they may need to change over time.
- Give water districts opportunities to sell water that might otherwise spill.
- Consider other alternatives such as habitat modifications, changing fishing regulations, and utilizing EWA assets to modify other project operations (e.g., power plants) in the western Delta region.
- Consider alternatives that fund the account through volume-based user fees.
- The traditional regulatory approach should still be used to protect all life stages of fish, as well as their food base, low salinity habitat and other ecosystem elements.
- Identify a process where CALFED agencies can ensure that EWA and private water transfers are complementary and not competitive.
- Where will water come from to bank for the south?
- Create procedures for how and when it is appropriate to elevate the EWA to Tier 3.
- The EIS/EIR should consider how the EWA might be utilized in ways other than for augmenting stream flows and modifying/replacing exports. These alternatives could include habitat modifications, fishing regulation changes, and modifying other project operations in the Delta.

23.5.2.3 **(b)(2) and CVPIA**

- EWA and Central Valley Project Improvement Act (CVPIA) (b)(1) and (b)(2) are designed to provide for environmental benefits. How will these programs be

coordinated or integrated to achieve their purposes, and how will their implementation affect SWP and CVP operations?

23.5.2.4 Cost and Funding

- How much will this program cost taxpayers?
- A cost-benefit analysis should be conducted for the program.
- Willing sellers should not profit from the sale of water to the EWA, and purchase prices should reimburse sellers for actual costs.
- Value of water for sale should equal the cost associated with the permit or license pursuant to Water Code Section 1392 and 1629.
- Ensure cost of purchases are in accordance with market pricing.
- Consider alternatives that fund the account through volume-based user fees.
- Why should there be no uncompensated water cost to project users? Will all taxpayers pay for something that benefits project water users?
- In order to keep supplies to Kern County Water Agency (WA) at the current levels, the EWA buys back water from Kern County WA at a price that gives Kern County WA a substantial profit. Wouldn't it be cheaper to simply not deliver that amount of water to Kern County WA? Why is this paper exchange of water (but real exchange of money) not a gift of public funds?
- Analyze how regulatory baseline relates to project obligations to mitigate damages to fish and wildlife. Compare EWA baseline to obligation to mitigate impacts. Is EWA providing a benefit above the obligation?
- The EIR/EIS must first determine what the specific effects of the export projects are on fisheries in order to comply with Water Code Sections 11900 et seq. Those statutes require that the projects include as a reimbursable cost (paid by the contractors) amounts sufficient to pay for the preservation of fish and wildlife. Cost of enhancement of fish and wildlife are not reimbursable. Hence, the projects must first determine their effects on fish and wildlife and charge their contractors for the preservation thereof. Thereafter, actions/costs for the enhancement of fish and wildlife may be borne by programs such as the EWA. Absent this determination, expenditures to cover statutorily mandated reimbursable costs would be an illegal gift of public funds.
- The fact that the EWA does not provide benefits to all water users dependent on the watershed is another solid argument for user fees.
- Any program undertaken by state agencies to expend taxpayer funds to pay for costs which are statutorily allocated to private parties would constitute an illegal gift of public funds.

23.5.2.5 General

- How long would the program last? The duration of the program affects opportunities for the program and potential willing sellers.
- Will EWA operate similarly to a “bank account” carrying over from year to year?
- How will this document handle the impacts of an asset acquisition when the specifics of that acquisition are not known at this time?
- Consider lessons learned during the first year.
- Address ESA assurance: is EWA doing what it is supposed to do, i.e., 2001 short on assets, but still got assurances backstop protection, Tier 3 was not available.
- Is EWA large enough? Need to reevaluate the size of EWA on a regular basis.
- The programmatic document should be supplemented on an annual basis.
- CALFED must review the scientific justification for the amount of water already purchased and proposed to be purchase for the EWA.
- EWA water purchases are for recovery, not jeopardy, thus the water in this account is not water that necessarily would be taken through regulation if it were not purchased by the government. Moreover, even if this water were taken through regulation, it is not necessarily true that the water contractors would not be paid for the water, especially in light of the Tulare Lake Decision.
- The CALFED ROD states that the EWA is intended for “fishery protection and restoration/recovery needs as part of the overall Ecosystem Restoration Program.” Thus, the EWA is a critical tool to achieving overall restoration goals. Indeed, this function is the only justification for any state or federal funding for the EWA. It is essential that planning for the EWA reflect these co-equal objectives of the EWA.
- The scope of the EWA must not be expanded without additional assets and careful evaluation of the ability of the EWA to meet any added burden.
- The cumulative effects of all acquisition programs need to be addressed.
- Provide for a technical peer review of the analysis of hydraulics of the Delta.
- Use PROSIM for the analysis because CALSIM is not fully trusted.
- EWA re-directs an impact related to use of barriers at the time EWA assets are in use---this must be evaluated in the environmental document.
- Evaluate the impacts associated with the proposed annual operational changes.

- If the EWA water allocation was based on computer modeling, the EIR/EIS should explain how the outcome of this modeling relates to the ultimate size of the EWA.
- Would the EWA program exert control of private property and water rights?
- How will instream flow transfers be addressed?
- The state and federal acquisition programs need to be coordinated.
- What is the scientific basis for and relationship between the Environmental Water Program and the EWA?
- The EWA would cause negative impacts to south-Delta agricultural contractors through competition for available transferable water. Impacts would include increased prices, decreased water supply of transferable water, decreased export capacity, increased fallowing, and increased groundwater pumping.
- Parties who are riparian to or permitted diverters from such channels are entitled to the natural flow. At any time that San Joaquin River flows are inadequate for Delta riparian or senior water holders needs, no party with junior appropriative rights on the Sacramento system can store or divert water necessary for those downstream riparians or permitted diverters. During the months of October to December, Middle River is sometimes dry. Any refill of upstream reservoirs during that time would therefore be depriving riparians and senior rights holders of the Middle River to water they are entitled to.
- Profit cannot be made of the transfer of any rights under a permit or license to divert water.
- The EIS/EIR should include scenarios in which the EWA, with and without Tier 3 protections, is inadequate to provide required fish protections and the environmental impacts of the reduced fishery protection, of any additional mitigation measures that could be required by the situation, and in curtailment of water project operations that may result.
- Individual water bank facilities, and more specifically the Kern Water Bank, should prepare supplemental environmental documentation regarding the substantial change to their individual operations as a result of this project.

23.5.2.5.1 *Management of Assets*

- Will surplus water be a source of EWA assets?
- Will the EIS/EIR describe how failure to acquire assets will be dealt with?
- What happens to EWA assets if the Coordination Operation Agreement or Operations Criteria and Procedures changes?
- How can we be assured that assets can be acquired this year and future years?

- How will the mix of assets need to change over time?
- Operational flexibility is a must.
- It doesn't make sense to buy from those who are not getting their full entitlement.
- Ensure that EWA assets are real.
- The EWA is not intended to be used to assure a given level of water diverters to any South-of-Delta water user that is not explicitly included in the EWA baseline.
- Define and provide the Tier 3 water supplies.

23.5.3 Public Review Of Draft EIS/EIR

The Public Draft EIS/EIR is available for review and comment for 60 days following filing of the Notice of Availability (NOA) of the EIS with the U. S. Environmental Protection Agency and the Notice of Completion (NOC) of the EIR with the California State Clearinghouse.

The NOA and notice of public hearing on the EIS were published in the *Federal Register*. The NOC was filed with the California State Clearinghouse.

The purpose for public review of the DEIS/EIR is to receive comments from interested parties on its completeness and adequacy in disclosing the environmental effects of the proposed project. Following the close of the DEIS/EIR public review period, a second document containing comments received on the DEIS/EIR and responses to the significant environmental points raised in those comments, will be prepared and published. Together, the DEIS/EIR and the responses to comments will constitute the Final EIS/EIR. Reclamation is responsible for adopting the EIS as adequate in compliance with NEPA, and DWR is responsible for certifying the EIR as adequate in compliance with CEQA. After adoption and certification, the agencies will use the EIS/EIR in making their determination whether to approve the project.